IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2640 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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COMMISSIONER OF CUSTOMS

Versus

RASILABEN H RATHOD

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Appearance:

1. Special Civil Application No. 2640 of 2004

MR ASIM J PANDYA for Petitioner No. 1
MR BB NAIK for Respondent No. 1-2,4-8
MS JIRGA D JHAVERI for Respondent No. 1-6,8
MR KR JANI for Respondent No. 3
MR SH SANJANWALA SR. ADVOCATE WITH MR RS SANJANWALA AND MR SS SANJANWALA for Respondent No. 7
MR PARESH M DAVE for Respondent No. 9

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CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 05/05/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

What is challenged in this petition under Article 226/227 of the Constitution is the order dated 7.1.2004 passed by the Customs, Excise and Service Tax Appellate Tribunal, Mumbai allowing ROM Applications No. 986, 987, 988, 989, 990, 1024, 849, 967 and 889 of 2003 in Appeal Nos.653, 651, 652, 649, 648, 650, 676, 655 and 654 of 2001 filed by the respondents.

2. The above numbered appeals were filed by the present respondents challenging the order-in-original dated 28.2.2001/9.3.2001 passed by the Commissioner of Customs, Ahmedabad by which confiscation of seized goods was ordered and penalty was levied. By judgment and order dated 30.5.2003/8.6.2003, the Tribunal dismissed the appeals of the respondents herein and confirmed the order-in-original. The respondents thereafter filed the above-numbered ROM Applications on the ground that the written submissions made by the present respondents, i.e., appellants before the Tribunal and Miscellaneous Applications for bringing on record subsequent developments after the Order in Original was passed by the Commissioner of Customs, were not considered by the Tribunal.

After hearing the parties, the Tribunal allowed the ROM Applications by the impugned order dated 7.1.2004. Hence the Commissioner of Customs has challenged the said order in this petition.

3. While issuing notice on the petition, the operation of the Tribunal's order dated 17.1.2004 was stayed. The said ad-interim order was confimred while admitting the petition.

4. Mr. Asim Pandya, learned counsel for the petitioner, has submitted that jurisdiction of the Tribunal under section 129B (2) is very limited. It only confers power on the Tribunal to rectify mistakes apparent on the record and amend the order and it does not confer any power for review of the order.

Mr. Pandya has placed strong reliance on the decision of the Apex Court in CCE vs. Steelco Gujarat Ltd., 2004 (163) ELT (SC) 403. After examining the provisions of Section 35C(2) of the Central Excise Act, 1944, which is in pari materia with the provisions of Section 129B(2) of the Customs Act, 1962, the Apex Court

has held that although the ground for rectification, namely, an error on the face of the record may be common to a power for review, the nature of the power to be exercised in the two cases is distinct. The power of review is not limited to rectification and is wider than the power conferred under Section 35C(2) of the Central Excise Act. The power of review is not an inherent power and must be expressly granted. It has not been so granted under the Central Excise Act to the Tribunal. What has been given is a limited power of rectifying any mistake apparent from the record.

5. On the other hand, Mr. S.H. Sanjanwala, Senior Advocate with Mr. R.S. Sanjanwala and Mr. S.S. Sanjanwala, Mr. B.B. Naik, Ms. J.D. Jhaveri, Mr. Paresh M. Dave and Mr. K.R. Jani learned counsel appearing for the respective respondents whose clients had filed the above-numbered ROM applications, state that since while confirming ad-interim relief in this petition, liberty was reserved to the respondents herein to challenge the Tribunal's original judgment and order dated 30.5.2003/8.6.2003 in a substantive petition, the present respondents have no objection if the aforesaid rectification order dated 7.1.2004 is set aside.

6. In view of the above consensus, this petition is allowed and the impugned order dated 7.1.2004 passed by the Tribunal in above-numbered ROM applications is hereby set aside.

Rule is made absolute to the aforesaid extent with no order as to costs.

(M.S. Shah, J.)

(A.M. Kapadia, J.)

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